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Applicant Docket No. D/MSD01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Robert H. Murray
Application No.: 10/724,795
Filed: 12/01/2003
Examiner: CEGIELNIK, URSULA M
Art Unit: Art Unit 3712
Title: A SAFE TOY BALLOON CLOSURE AND SEALING
DEVICE AND ASSEMBLIES USING SAME

Commissioner for Patents
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Robert H. Murray
(Name of applicant)

Robert H. Murray
(Signature)

June 30, 2004
Date of Signature

Sir:

COMMUNICATION

This is a communication on the above subject case. This communication is in reaction to the two telephone conversations Applicant had with the Examiner on Monday June 28, 2004 regarding whether Applicant's May 13, 2004 ELECTION OF CLAIMS AND SPECIES was responsive.

In the Election/Restrictions Office Action of March 30, 2004, the Examiner alleged that there were two inventions I (considered the combination, **allegedly corresponding to Claims 1-19**), and II (considered the subcombination, **allegedly corresponding to Claims 20-29**). As will be pointed out below, this attempted corresponding of Claims is respectfully submitted to include error, because Claims 21-22 and 24-25 should correspond to invention I.

On page 2, line 15 of the March 30, 2004 Office Action, the Examiner asserted that in "the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination [invention I] does not require a repulsive agent. The subcombination [invention II] has separate utility such as an anti-chewing agent for puppies, i.e., GRANNICK'S BITTER APPLE® deterrent. Because these inventions [I and II] are distinct for the reasons given above and the search required for [Group] I is not required for [Group] II, restriction for examination purposes as indicated is proper."

On page 3 of the March 30, 2004 Office Action, the Examiner also identified allegedly patentably distinct species by drawing figures.

On page 3 also, the Examiner advised the Applicant "that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election."

For purposes of this communication, the Applicant assumes the examiner has a copy of the Applicant's May 13, 2004 express mail election entitled ELECTION OF CLAIMS AND SPECIES. Applicant also assumes the Examiner

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will refer to Applicant's drawings and the claims as filed and placed under restriction.

Applicant's clear understanding of the Examiner's reason or grounds for the Restriction requirement is that alleged invention I, the combination, "does not require a repulsive agent, and that the alleged invention II, the subcombination, does require a repulsive agent."

IF THIS TRUE, then Applicant respectfully submits that there was/is error in the Examiner's attempted identification of only claims 1-19 as corresponding to alleged invention I (that does not require a repulsive taste agent). This is because Claims 21-22, and 24-25 clearly also do not require a repulsive taste agent. As such, Claims 21-22, and 24-25 should correspond to alleged invention I. Applicant's May 13, 2004 ELECTION OF CLAIMS AND SPECIES treated Claims 1-19, plus 21-22 and 24-25 as such.

As such, Applicant's May 13, 2004 ELECTION OF CLAIMS AND SPECIES was/is clearly and properly directed to all claims and species that do not require or include a repulsive taste agent.

Further, in compliance with the Examiner's advise above, Applicant's May 13, 2004 ELECTION OF CLAIMS AND SPECIES also clearly includes (a) an identification of the species that are elected consonant with the reasons and grounds for the restriction requirement, and (b) a listing of all claims readable thereon.

In light of all of the above, Applicant does not understand why in the two telephone conversations of June 28, 2004, the Examiner continued to allege that Applicant's May 13, 2004 ELECTION OF CLAIMS AND SPECIES is/was not responsive to the Election/restriction of March 30, 2004? Please explain.

However, Applicant respectfully submits here, that based on the claims as filed, an alleged invention I directed to a combination that does not require a repulsive agent, would and must include Claims 1-19, 21-22, and 24-25.

As such, Applicant respectfully submits that the May 13, 2004 ELECTION OF CLAIMS AND SPECIES was/is clearly responsive to the Examiner's Election/restriction of March 30, 2004.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Robert H. Murray, at Telephone Number 585-223-1225, Fairport, New York.

Respectfully submitted,

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June 30, 2004